

November 24, 2008

CLERK, U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

0001522803

6 Pages

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 ALAN CHENEY & ASSOCIATES INSURANCE
 SERVICES - MODESTO, INC.

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

MODESTO DIVISION

In Re:

Case No. 08-90705

ALAN CHENEY & ASSOCIATES
 INSURANCE SERVICES -
 MODESTO, INC.,

Debtor,

ALAN CHENEY & ASSOCIATES
 INSURANCE SERVICES -
 MODESTO, INC.,

Plaintiff,

vs.

BROOKE CREDIT
 CORPORATION, aka ALERITAS
 CAPITAL,

Defendant.

Adversary Case No. 08-09053

WFH-12

DATE: November 19, 2008

TIME: 10:00 a.m.

DEPT: D (Sacramento)

JUDGE: Robert S. Bardwil

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court having held a hearing on the Debtor's Motion for Summary Judgment on
 November 19, 2008; appearances having been made by Daniel L. Egan, Wilke, Fleury, Hoffelt,
 Gould & Birney, LLP; the Court having reviewed the pleadings and papers on file, and good

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November 21, 2008

CLERK, U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
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FINDINGS OF FACT AND CONCLUSIONS OF LAW

cause appearing, the Court now makes the following findings of fact and conclusions of law:

I.
FINDINGS OF FACT

A. First Cause of Action

1. On or after April 28, 2006, Alan Cheney purchased the stock of Unique Dependable Insurance Services, Inc. ("Unique") from Brooke Franchise Corporation (later known as Brooke Capital Corporation.)

2. In the transaction, Unique and Plaintiff executed a promissory note (the "Promissory Note") in favor of Aleritas in the approximate amount of \$3,000,000.

3. In connection with the transaction, Plaintiff executed a security agreement (the "Security Agreement") granting Aleritas a lien on all of Unique's assets to secure payment of the Promissory Note.

4. Plaintiff received no consideration in exchange for incurring the obligations set forth in the Promissory Note.

5. Plaintiff received no consideration in exchange for granting the liens created by the Security Agreement.

6. Plaintiff received no consideration in exchange for incurring obligations or granting liens pursuant to any other documents executed in connection with the transaction described in the Promissory Note and Security Agreement.

7. At all times during and after entering into the transaction described in the Promissory Note and Security Agreement the fair market value of Plaintiff's liabilities exceeded that of its assets.

8. The fair market value of Unique's assets was not more than \$1,050,000 on or around April 28, 2006.

9. The fair market value of Cheney & Associates Insurance Services, Inc.'s ("ACA Lodi") assets at the time of the April 2006 transaction was not more than \$126,334.

10. The fair market value of Plaintiff's assets at the time of the April 2006 transaction was not more than \$ 252,076.

11. The fair market value of Alan Cheney's assets at the time of the April 2006 transaction was not more than \$ 389,500.

12. At the time of the April 2006 transaction, Plaintiff's liabilities were at least \$3.0 million.

B. Second Cause of Action

1. On or after April 28, 2006, Alan Cheney purchased the stock of Unique from Brooke Franchise Corporation (later known as Brooke Capital Corporation.)

2. In the transaction, Plaintiff executed a promissory note (the "Promissory Note") in favor of Aleritas in the approximate amount of \$3,000,000.

3. In connection with the transaction, Plaintiff executed a security agreement granting Aleritas a lien on all of Unique's assets to secure payment of the Promissory Note.

4. Plaintiff received no consideration in exchange for incurring the obligations set forth in the Promissory Note.

5. Plaintiff received no consideration in exchange for granting the liens created by the Security Agreement.

6. Plaintiff received no consideration in exchange for incurring obligations or granting liens pursuant to any other documents executed in connection with the transaction described in the Promissory Note and Security Agreement.

7. At all times during and after entering into the transaction described in the Promissory Note and Security Agreement the fair market value of Plaintiff's liabilities exceeded that of its assets.

8. The fair market value of Unique's assets was not more than \$1,050,000 on or around April 28, 2006.

9. The fair market value of ACA Lodi's assets at the time of the April 2006 transaction was not more than \$126,334.

10. The fair market value of Plaintiff's assets at the time of the April 2006 transaction was not more than \$ 252,076.

11. The fair market value of Alan Cheney's assets at the time of the April 2006

1 transaction was not more than \$ 389,500.

2 12. At the time of the April 2006 transaction, Plaintiff's liabilities were at least \$3.0
3 million.

4 **C. Third Cause of Action**

5 1. On or after April 28, 2006, Alan Cheney purchased the stock of Unique from
6 Brooke Franchise Corporation (later known as Brooke Capital Corporation.).

7 2. In the transaction, Plaintiff executed a promissory note (the "Promissory Note") in
8 favor of Aleritas in the approximate amount of \$3,000,000.

9 3. In connection with the transaction, Plaintiff executed a security agreement granting
10 Aleritas a lien on all of Plaintiff's assets to secure payment of the Promissory Note.

11 4. Plaintiff received no consideration in exchange for incurring the obligations set
12 forth in the Promissory Note.

13 5. Plaintiff received no consideration in exchange for granting the liens created by
14 the Security Agreement.

15 6. Plaintiff received no consideration in exchange for incurring obligations or
16 granting liens pursuant to any other documents executed in connection with the transaction
17 described in the Promissory Note and Security Agreement.

18 7. At all times during and after entering into the transaction described in the
19 Promissory Note and Security Agreement the fair market value of Plaintiff's liabilities exceeded
20 that of its assets.

21 8. The fair market value of Unique's assets was not more than \$1,050,000 on or
22 around April 28, 2006.

23 9. The fair market value of ACA Lodi's assets at the time of the April 2006
24 transaction was not more than \$126,334.

25 10. The fair market value of ACA Plaintiff's assets at the time of the April 2006
26 transaction was not more than \$ 252,076.

27 11. The fair market value of Alan Cheney's assets at the time of the April 2006
28 transaction was not more than \$ 389,500.

12. At the time of the April 2006 transaction, Plaintiff's liabilities were at least \$3.0 million.

13. At the time of the April 2006 transaction, Plaintiff had three creditors who were still creditors as of the date of commencement of the Chapter 11 case.

D. Sixth Cause of Action

1. Claim No. 1 filed by Aleritas is based solely upon the Promissory Note and Security Agreement.

**II.
CONCLUSIONS OF LAW**

1. When Plaintiff executed the Promissory Note and Security Agreement, it made a transfer without receiving reasonably equivalent value. See, Bay Plastics v. BT Commercial Corp., (In re Bay Plastics), 187 B.R. 315, 329-330 (Bankr. C.D. Cal. 1995)); Pajaro Dunes Rental Agency v. Spitters (In re Pajaro Dunes Rental Agency), 174 B.R. 557, 572 (Bankr. N.D. Cal. 1994.)

2. Plaintiff was insolvent at the time it executed the Promissory Note and Security Agreement. See 11 U.S.C. § 101(32)(A); In re Ohio Corrugating Co., (1988 BC ND Ohio) 91 BR 430; In re Goodman Industries, Inc., (1982 BC DC Mass) 21 BR 512.

3. Plaintiff was engaged in business with unreasonably small capital on or around the time of the transfer.

4. The execution of the Promissory Note and Security Agreement was avoidable under Bankruptcy Code sections 544 and 548.

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Dated: November 24, 2008

WILKE, FLEURY,
HOFFELT, GOULD &
BERNEY, LLP
ATTORNEYS AT LAW
SACRAMENTO